

HOUSE
STUDY

GROUP bill analysis

4/9/85

HB 1218
C. Evans
(CSHB 1218 by Arnold)

SUBJECT: Regulation of prefabricated buildings

COMMITTEE: Business and Commerce: committee substitute recommended

VOTE: 6 ayes--Jackson, Arnold, Berlanga, Glossbrenner, A. Hill, Riley
2 nays--Robnett, R. Smith
1 absent--Oliveira

WITNESSES: For--Galt Graydon, William Guchat, Jr., Cardinal Industries, Inc.; Peggy Green Childress, National Gypsum Co.; Bill Farish, Brinkcraft, Inc.; Larry Niemann, Texas Apartment Association; Richard Kleymeyer, Texas Manufactured Housing Association; Charles Mattson, Sumney Building Systems
Against--None
On--John Steele, Texas Department of Labor and Standards

BACKGROUND: The Texas Department of Labor and Standards currently regulates the manufacture, installation, and sale of prefabricated houses under the Texas Manufactured Housing Standards Act, VACS art. 5221f. The act covers dwellings designed for use as permanent residences.

DIGEST: CSHB 1218 would regulate and set standards for "industrialized" housing and buildings. "Industrialized housing" would mean a residential structure designed for occupancy by more than two families as a permanent residential structure and made out of two or more modules or modular components at a place other than the permanent residential site. "Industrialized building" would mean a commercial structure built and installed in similar fashion. Neither term would include structures more than two stories or 35 feet high, as measured from the finished grade elevation at the entrance to the peak of the roof.

Both kinds of structures would have to meet the standards of the National Electrical Code of the National Fire Protection Association. They would also

DIGEST:
(continued)

have to comply either with the standards of the International Conference of Building Officials or with those of the Southern Building Code Congress International, Inc., depending on which were enforced by the city where the structure was installed. If the city used neither set of model codes, or if if the structure was installed outside city limits, the manufacturer could choose which set to follow. The versions of the codes that existed on Jan. 1, 1985, would apply, and any later changes in them would would apply only if approved by the state.

Cities could not impose any other building standards on industrialized structures. Local land-use, zoning, building-site, and architectural regulations could not treat them differently than structures built on site.

Each page of the designs, plans, and specifications for industrialized structures would have to be stamped with the state seal of approval to show compliance with the uniform codes.

The Department of Labor and Standards would inspect the manufacture of industrialized structures at the factory to confirm compliance with state standards. Department-designated third-party inspectors could perform this task. City building officials would inspect installation of the structures on the permanent site. The state would have to designate third-party inspectors to check installations outside city limits.

The department would charge fees to cover all costs of manufacturing inspection. For inspecting installation of industrialized structures, cities could charge fees at rates no higher than for structures built on site.

CSHB 1218 also would change existing manufactured-housing regulations. Exempted from these regulations would be manufactured or industrialized housing designed for use by more than two families or for commercial use. The department would inspect manufacturing facilities. It would also inspect installation of manufactured housing, except it would have no authority to inspect modular housing in cities that chose to do the inspections themselves. Local-inspection fees for modular- home installation could not exceed inspection fees for on-site construction.

DIGEST:
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Cities could not exclude one-family or two-family modular homes from residential areas if the homes complied with local ordinances (which could not conflict with state law on modular housing), had been inspected at the manufacturing plant, and were permanently affixed to a permanent foundation.

The bill would establish an 11-member Texas Modular Building Code Council to ensure that designs of modular homes and industrialized structures met state standards. The Governor would appoint the council. Three members would represent the manufactured-structure industry, three would represent building officials of cities of more than 25,000, and two would represent general contractors who build homes on site. The other members would be three professionals licensed or registered in Texas: a structural engineer, an electrical engineer, and an architect. These three could not be connected with the manufactured-structure industry.

The council would approve third-party inspectors and design-review agencies (engineering firms approved by the state). The council would decide whether designs or construction methods were substantially equivalent to those required by mandatory building codes. All sheets and pages of designs, plans, and specifications that met code standards and were approved by the department or a design-review agency would have to bear the council's seal of approval. The council could issue instructions on building-inspection procedures to ensure design compliance.

The decisions, actions, and interpretations of the council would be binding on the department, third-party inspectors, design-review agencies, and political subdivisions. The council would come under the Sunset Act and would be abolished on Sept. 1, 1989.

SUPPORTERS
SAY:

Current state law regulates only residential housing constructed off site. Larger structures used as motels or office buildings come under a hodgepodge of local manufacture and installation standards and inspection procedures, or they are not regulated at all. The regulatory muddle has discouraged builders of these structures from putting their factories in Texas, depriving the state of a big source of jobs. This bill would set uniform, statewide standards.

SUPPORTERS
SAY:
(continued)

Only structures up to two stories or 35 feet high would be state-regulated, because anything taller is usually not mass-produced, and standards suitable for mass production are not always right for larger, custom-designed buildings. Local authorities need regulatory leeway in these cases.

In banning discrimination by cities against modular homes, the bill merely restates law the courts have already established. Unlike mobile homes, modular homes meet the highest standards and are often more solidly made than structures built on site. Courts have properly held that cities can make zoning distinctions for mobile homes but not modular homes. CSHB 1218 would write those court rulings into the statute books to settle any lingering legal question once and for all.

Inspectors at the Department of Labor and Standards are spread too thin. Inspections at manufacturing sites are delayed and sometimes cursory. Cities have ample ability, and should have exclusive authority, to inspect installation without having the state look over their shoulder. For installations outside cities, the state can have inspections done expertly and thoroughly by qualified third-party inspectors, screened by the department, instead of having to hire and train new employees.

In order to maintain statewide uniformity, cities are already barred from imposing their own standards on the construction and installation of "manufactured housing." The same goal will be served by barring different local standards for industrialized structures.

The Texas Modular Building Code Council will be a balanced, expert forum of interpreters of the complex model building codes that will apply under this bill. The council will be an advisor, not an adversary, of the department, which will do the council's staff work. The council will not set policy, it will interpret and clarify technicalities, so there is no reason to add a public member.

OPPONENTS
SAY:

This bill would help some manufacturers of industrialized buildings by providing uniform regulation statewide, but that regulation would be too limited. Under current law, the modular-home business is subject to a full panoply of consumer protections,

OPPONENTS
SAY:
(continued)

including sale warranties, title registration, and registration of those who manufacture, install, and sell these structures. These consumer protections would not apply to industrialized structures under this bill. Those who buy these structures for commercial use should have the same, or at least substantially similar, protection.

The bill would not go far enough in regulating industrialized structures because it would not require rigorous standards and inspection for structures more than two stories or 35 feet high. Thus manufacture and installation of three-story motels, or commercial buildings placed atop piers in a beach area, would not be covered, except perhaps by widely varying local standards. And most local inspectors have too little knowledge of manufacturing to regulate that process adequately for larger structures. The bigger the building, the greater the potential for harm if it should collapse or catch fire, so larger industrialized structures need state manufacturing inspection as well.

The Department of Labor and Standards would not have to use third-party manufacturing inspectors under this bill, so why should it be forced to use third-party installation inspectors outside incorporated areas? Third-party inspectors are frequently employed by the business whose products are being inspected and thus may be biased or subject to pressure.

The proposed council would have broad authority to interpret standards and influence inspection procedures. Yet there would be no one on the council representing the people who actually purchase and use these structures. At a minimum, the commissioner of labor and standards ought to be a member of the council instead of just its secretary.

The proposed council could be used to weaken strict department inspection procedures. If the council arbitrarily second-guessed procedures developed over many years, it would also cost a lot for the department to retrain its inspectors.

Under current law, the department may contract with cities to inspect installation of modular homes. The department makes spot checks to see if the inspections are being done properly and can reassume inspection authority if necessary. Under this bill, however, if a city decided to inspect installations, the department's

OPPONENTS authority to inspect would be preempted. Cities could,
SAY: as some have in the past, simply collect inspection
(continued) fees but do little or no inspecting.

The bill also would bar cities that want tougher standards from imposing them. The state should set minimum standards but should not keep cities from doing more if local circumstances require it.

OTHER
OPPONENTS This bill would interfere with proper local regulation
SAY: of land use. In some residential and commercial areas, prefabricated buildings are simply incompatible with buildings that are constructed on site. Letting prefabs into certain areas could lower property values. Deed restrictions, reflecting legitimate public preferences, often discriminate against manufactured housing and in favor of housing built on site. Where no such deed restrictions have been established, cities should be free to enforce by ordinance such local preferences concerning building quality.

NOTES: The substitute adds the language measuring a structure's height from the peak of its roof, in the provision defining the buildings subject to regulation. The substitute makes third-party inspectors of structures outside city limits subject to department as well as council approval. It also adds the provision for prior department recommendation of qualified third-party inspectors and design-review agencies that the council may approve.

The Senate companion, SB 584 by McFarland, is pending in the Economic Development Committee.